

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

IN RE UPSTREAM ADDICKS AND)	
BARKER (TEXAS) FLOOD-CONTROL)	
RESERVOIRS)	
)	
V.)	Sub-Master Docket No. 17-cv-9001L
)	
THE UNITED STATES)	
)	Senior Judge Charles F. Lettow
THIS DOCUMENT RELATES TO:)	<i>Electronically filed February 17, 2022</i>
)	
ALL UPSTREAM CASES)	
)	

**UNITED STATES' RESPONSE TO PLAINTIFFS' REQUEST FOR STATUS
CONFERENCE REGARDING TRIAL DATE AND ORDER ON PRETRIAL
SCHEDULING, AND CO-LEAD COUNSEL'S SEPARATE REQUEST FOR
APRIL 25, 2022, TRIAL SETTING**

Following the telephone status conference held on February 11, 2022, the Court issued an Order on February 14, 2022 (ECF No. 440), confirming the availability of a courtroom at the federal district courthouse in Houston for May 31 through June 10, 2022.

On February 15, 2022, Plaintiffs filed a Request for Status Conference Regarding Trial Date and Order on Pretrial Schedule (ECF No. 443). In requesting a status conference on these matters, Plaintiffs note, among other things, that they “have identified three conflicts of varying degree with the proposed May 31-June 10 setting.” Pls.’ Request 2. One of the Plaintiffs’ co-lead counsel also filed a separate request that the Court schedule the compensation phase trial for the two-week period beginning April 25, 2022. ECF No. 444. This filing does not address the issue of conflicts.

For its part, the United States is working to check on witness availability for both the May 31-June 10 trial dates specified in the Court’s recent Order, as well as the earlier two-week window of April 25-May 6. As is to be expected for a trial of this length and the fairly large number of potential witnesses, some witnesses have conflicts during one or both windows of

time. However, none of these conflicts appear to be insurmountable, provided that the Court and parties allow for some flexibility in the trial schedule, including the possibility of taking some witnesses out of the parties' preferred order, allowing a limited number of witnesses to testify by video, or reserving a day outside of the proposed trial windows to hear testimony (in person or remote) in the event that a necessary witness has a conflict that cannot be resolved.

For context, during the April 25-May 6 window, the United States has identified one expert witness who is completely unavailable during that two-week window because of another lengthy trial that is already set. Given that conflict, we would need to request an accommodation to allow this expert to testify outside of that two-week window. The United States has also identified several fact witnesses who are presently on both parties' preliminary witness lists and who have conflicts on certain days. For example, one witness is scheduled to be deployed on military orders and would only be available during the first few days of this two-week period. Our expectation is that the parties would be able to work around these conflicts together, with any necessary guidance from the Court, as we did during the liability trial.

For the May 31-June 10 trial window, the United States has identified one expert witness who will be out of the country on a previously scheduled trip. This expert is unavailable to testify in person because of his pre-existing commitment, but he is willing to testify by video during that two-week trial window. In addition, as with the earlier two-week window, there are several fact and expert witnesses identified on the parties' preliminary witness lists who have conflicts on certain days that the parties would need to work around.

The United States is available for a telephone status conference, if the Court determines that another conference on this matter is needed.

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Dated: February 17, 2022

Respectfully submitted,

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